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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,373	05/12/2006	Axel Stender	056982/71	8296
31013	7590	10/03/2008	EXAMINER	
KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 1177 AVENUE OF THE AMERICAS NEW YORK, NY 10036			GOODEN JR, BARRY J	
ART UNIT		PAPER NUMBER		
3616				
NOTIFICATION DATE		DELIVERY MODE		
10/03/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

klpatent@kramerlevin.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/579,373	STENDER ET AL.
	<b>Examiner</b> BARRY J. GOODEN JR	<b>Art Unit</b> 3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 21 August 2007 (Preliminary Amendment).  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-16 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-16 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 May 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 5/12/06

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Requirement for Information under 37 CFR 1.105***

1. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
2. Based upon the nature of the case the applicant and the assignee of this application are required under 37 CFR 1.105 to provide:
  - a. Related technical information - specifically the manufacturer and part number as well as any technical data sheets regarding multiple-level/multiple-pressure momentary-contact switches which are related to the claimed invention (Reference is made to the applicant's claim 14).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 4, 5, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 4 recites the limitation "said electrically actuatable valves" in line 5 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites "wherein said at least one manual actuating element is designed as a momentary-contact switch" which renders the claim indefinite as to provide the

ability to admit and exhaust air from the bellows would require two momentary-contact switches were only one is claimed.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3-8, 10-13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sulzyc et al., US Publication 2002/0096840.

In regards to claims 1, 3-8, 10-13 and 15, Sulzyc et al. discloses all of the claimed elements including an air suspension device comprising bellow, an electronically controlled level-regulating device (12), an electrically actuatable valve device (51), at least one manual actuating element (handle of 55), capability even in the absence of power (Reference is made to Paragraph 0039) (Reference is made to Figure 6);

further comprising a servo-valve device (19);

wherein said at least one manual actuating element is constructed and arranged to actuate a three-position valve (Reference is made to Paragraph 0039);

a displacement sensor (35);

at least one pressure sensor (52);

wherein said at least one manual actuating element includes a first element (56) and a second element (57);

wherein said at least one manual actuating element is designed as a rotary arm (Reference is made to Figure 6);

a directional control valve (30);

a signal transmitter (Reference is made to Figure 6, element 58); and,

wherein said manual actuating element is disposed in a housing (vehicle) together with said electrically actuatable valve device.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sulzyc et al. in view of Smith et al., US Patent 5,016,912.

In regards to claim 2, Sulzyc et al. discloses all of the claimed elements excluding a manually actuated valve located in a parallel and bypassing branch from an electrically controlled valve.

Smith et al. discloses a manual control in a parallel and bypassing branch from an electric controller (Reference is made to Figure 4).

It would have been obvious to modify Sulzyc to have included the manually actuated valve being located in a parallel and bypassing branch so as to prevent a situation where the electrically controlled valve although de-energized, it should be in failsafe position, is not located in the failsafe position thus creating a situation where operating the manual actuating element is futile.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sulzyc et al. in view of Lin et al., US Publication 2003/0122329.

In regards to claim 9, Sulzyc et al. discloses all of the claimed elements excluding the manual actuating element being designed as a momentary-contact switch.

Lin et al. discloses a manually actuated momentary contact switch operable to control the height of a vehicle.

It would have been obvious to modify the manual actuating element of Sulzyc et al. in view of Lin et al. to include being designed as a momentary contact switch since

they are known equivalents in the art and one manual actuating element could be substituted for the other as desired by design choice or required by financial or other situational circumstance.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sulzyc et al. in view of Schneider et al., US Patent 5,176,391.

In regards to claim 16, Sulzyc et al. discloses all of the claimed elements excluding a three-position valve being a rotary slide valve.

Schneider et al. discloses a three position rotary slide valve (162,164,166).

It would have been obvious to modify the manual actuating element of Sulzyc et al. in view of Schneider et al. to include being designed as a three-position rotary slide valve since the three-position valves are known equivalents in the art and valve could be substituted for the other as desired by design choice or required by financial or other situational circumstance.

13. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sulzyc et al.

In regards to claim 14, Sulzyc et al. discloses all of the claimed elements excluding a momentary-contact switch which is depressible at multiple levels/pressures.

Such momentary-contact switches are known in the art so as to provide multiple levels of response.

It would have been obvious to have provided the system of Sulzyc et al. multiple level momentary-contact switches so as to enable Sulzyc et al. to have multiple fill rates one for a fast fill rate and one for a slower fine tune fill rate to enable accurate yet quick positioning for loading/unloading.

***Double Patenting***

14. Claims 1-16 of this application conflict with claims 1, 2 and 8-11 of Application No. 10/579,127. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARRY J. GOODEN JR whose telephone number is (571)272-5135. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Q. Nguyen can be reached on (571) 272-6952. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Q. Nguyen/  
Supervisory Patent Examiner, Art Unit 3616

Barry J Gooden Jr.  
Examiner  
Art Unit 3616

BJG